

IN THE SUPREME COURT OF MISSISSIPPI**NO. 2015-FC-01317-SCT****ROBERT SWINDOL****APPELLANT****v.****AURORA FLIGHT SCIENCES
CORPORATION****APPELLEE****Certification by the United States Court of Appeals for the Fifth Circuit**

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF
APPELLEE AS AMICUS CURIAE**

INTRODUCTION

On August 28, 2015, the United States Court of Appeals for the Fifth Circuit certified the question “[w]hether in Mississippi an employer may be liable for a wrongful discharge of an employee for storing a firearm in a locked vehicle on company property in a manner that is consistent with [Miss. Code Ann.] Section 45-9-55.” *See Swindol v. Aurora Flight Sciences Corp.*, No. 14-60779 Slip. Op. at 9 (5th Circuit August 28, 2015). Leaf River is the Defendant in a cause styled *Joseph Edward Parker v. Leaf River Cellulose, L.L.C.*, No. 15-60034, also in the United States Court of Appeals for the Fifth Circuit. The *Leaf River* litigation mirrors the instant *Swindol* litigation, as it involves the question of whether Mississippi Code § 45-9-55 represents an additional exception to Mississippi’s employment-at-will doctrine. The Fifth Circuit issued an opinion in *Leaf River* dismissing the claims against Leaf River, but that court held in abeyance the issuance of the mandate until this Court issues a ruling on its certified question. *See Leaf River*, No. 15-60034 Slip. Op. at 1 (5th Cir. July 27, 2015) (*held in abeyance*) (attached hereto as Exhibit A); *see Swindol*, No. 14-60779 Slip Op. at 9 (“In light of our certification of

this question, the mandate in *Leaf River* has been held pending the Mississippi Supreme Court's response to this certification").

STATEMENT THAT AMICUS BRIEF SATISFIES RULE 29(a)

Mississippi Rule of Appellate Procedure 29(a) requires a party moving for leave to file as *amicus curiae* to "demonstrate that (1) *amicus* has an interest in some other case involving a similar question" Miss. R. App. P. 29(a). While Rule 29(a) sets forth four potential grounds for filing as *amicus curiae*, demonstration of only one is necessary. *Id.* As noted above, *Leaf River* is the defendant in a case involving substantially the same legal question certified to this Court in *Swindol*. Consequently, *Leaf River* as *amicus curiae* "has an interest in some other case involving similar question." *Id.*

Leaf River submits further that the Court would benefit from its proposed *amicus* brief. Though any of the four grounds listed in Rule 29(a) are sufficient to support *Leaf River's amicus curiae* filing, two of the other factors illustrate the benefit of permitting *Leaf River's* contribution. First, there are "matters of fact [and] law that may otherwise escape the court's attention." Miss. R. App. P. 29(a). The facts and law of another fully briefed, argued, and decided case on the same issue undoubtedly would assist the court in determining whether answering the certified question is proper and on the merits of the question. *Leaf River's* contribution provides this additional value. Second, *Leaf River* "has substantial legitimate interests that will likely be affected by the outcome of the case and which interests will not be adequately protected by those already parties to the case." *Id.* As noted above, the Fifth Circuit ruled in *Leaf River's* favor. *Leaf River*, No. 15-60034 Slip. Op. at 5-6, Exh. A. *Leaf River*, then, wishes to submit argument regarding, *inter alia*, the preservation of its own position in the *Leaf River* litigation – specifically, that this Court should decline to answer the question as certified.

See Miss. R. App. P. 20(a) (“The Supreme Court may, in its discretion, decline to answer the questions certified to it.”)

THIS, the 5th day of October, 2015.

Respectfully submitted,

BY: /s/ W. Thomas Siler, Jr.

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CERTIFICATE OF SERVICE

The undersigned attorney of record for Leaf River Cellulose, L.L.C., does hereby certify that I have this day served the foregoing *BRIEF* upon the following parties via the Mississippi Supreme Court's CM/ECF system or U.S. Mail, postage prepaid, at the addresses listed below:

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This the 5th day of October, 2015.

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